note; Neill *v.* Keese, 5 Texas 23, 51 Am. Dec. 754, and note; 1 Perry on Trusts, 165.

A resulting trust if it arises at all must arise at the time the legal title is taken. Beecher *v.* Wilson, 84 Va. 813, 10 Am. St. 883; Miller *v.* Blose, 30 Gratt. 744.

Parol evidence to establish a resulting trust must be clear, unquestionable and certain. Donaghe *v.* Tams, 81 Va. 132; Woodward *v.* Sibert, 82 Va. 441. But when the payment of the purchase money by one for a conveyance made to another is established, the charge that the legal title was made to another to defeat the creditors of the purchaser must also be established by clear proof. Higginbotham *v.* Bogg, U. S. C. C. A. (4th Ct.), May 2, 1916.

Wills—Construction—"Money in Bank"—Lyons v. Lyons, U. S. C. C. A., May 13, 1916.—On an appeal in the principal case from the District Court of the United States for the Northern District of West Virginia, at Clarksburg, it was contended by appellant that the words "Money in bank" used in a will, did not pass money on time deposit or savings account because such monies were debts, not due, owing by the bank to the depositor, and hence were choses in action. The court after considering the facts and circumstances connected with the execution of the will in question, held that the term "money in bank," employed by the testator was used in a broad and not a technical sense, and that after paying certain expenses referred to any balance that might remain in the bank of the money that he had deposited subject to check as well as any amount on time deposit, passed to the legatee.

The court in considering the principal case used the following language, in quoting from the case of Wooton *v.* Rett, 12 Gratt. 205: "In performing the duty of expounding a will, the court will make the amplest allowance for the unskillfulness and negligence of the testator, technical informalities will be disregarded, the most perplexing complications of words and sentences will be carefully unfolded, and the traces of the testator's intention will be diligently sought out in every part of the instrument, and the whole carefully weighed together.

"Nor in the performance of this duty will the judicial expositor be confined to its mere contents. For an investigation into the state of facts under which the will was made will often materially aid in elucidating the scheme which the testator had in mind for the disposition of his estate. Hence he will endeavor to place himself in the situation of the person whose language he is called upon to interpret; and as this can only be done by the aid of extrinsic evidence, such evidence may be resorted to for the purpose of showing the situation of the testator and the state of his family and of his property at the time of making his will. And, generally, evidence

may be received as to any facts known to the testator which may reasonably be supposed to have influenced him in the disposition of his property, and as to all the surrounding circumstances at the time of making the will. Wigram on Admission of Extrinsic Evidence in Aid of the Interpretation of Wills, p. 11, et seq.; Proposition 5, p. 51. Ibid, p. 57; Smith *v.* Bell, 6 Peters' R. 68, 75; Doe *v.* Martin, Nev. & Mann. 524; Shelton *v.* Shelton, 1 Wash. 53, 56; Kenyon *v.* McRoberts, Ibid. 96, 102; Ellis *v.* Merrimack Bridge, 2 Pick. R. 243; Brainerd *v.* Condry, 16 Conn. R. 1."

MISCELLANY.

Banks and Banking—Purpose and Relation—Remittances—Damages.—The capturing by the German forces of a Russian town has resulted in a lawsuit in the City of New York involving a rather novel point. The plaintiff applied to the defendant bank for the purpose of having it remit to a relative in a town in Russian Poland 500 rubles, and received from it the following receipt: "Received from Mr. I. S. Filker the sum of $217.50 for a remittance through the European postal service of five hundred rubles to Russia," with a memorandum impressed by a rubber stamp, "subject to delay on account of foreign war," and a further memorandum of the name and address of the person to whom the rubles were to be delivered. Owing to the capture of the town in question by the Germans the bank's forwarding agents were unable to deliver the rubles as directed, and returned them to the defendant, to await the further order of the plaintiff. The latter demanded that he be repaid the money originally paid by him, $217.50, which demand the bank refused, and tendered a much smaller sum, being the market value, on the day of the tender, of the 500 rubles.

Davies, J., of the Municipal Court of New York City, sustained the defendant's contention, saying in part:

"The general purpose of a bank is not to act as a merchant, but as an agent for a principal, and that such is the relationship here is evidenced by the agreement, which describes its object to be a 'remittance,' which, in the words of Bouvier, is 'money sent by one merchant to another, either in specie, bill of exchange, draft or otherwise.' Plaintiff, the principal, purchased of defendant, the banking agent, 500 rubles, and as part of the transaction defendant was to endeavor to make delivery of plaintiff's 500 rubles to the designated person. As the agent was unable to perform, his remaining obligation was to return the principal's property, the 500 rubles, to him. This has been tendered, and to my mind that ends the bank's obligation.

"To hold with plaintiff would be to also determine that at the